

DRACUT ZONING BOARD OF APPEALS

Meeting Minutes of July 21, 2016 at 7:00 p.m. @ Dracut Town Hall Selectmen's Meeting Room, 62 Arlington Street, Dracut.

2016-8 @ 1489 & 1499 Broadway Road – Variance relative to Zoning by law 2.12.50; front yard setback to accommodate canopy and pumps (fuel). Waiver of buffering requirements between land uses in business zone, Zoning by law Sections 3.14.30 and 3.14.40. Petitioner: Spartan Homes, LLC c/o George C. Malonis, Esquire.

Mr. McKiel read the transcript from the previous hearing and signed the Member Missed a Single Hearing Session.

Attorney Malonis presented a revised plan to specify the by-law for buffering. Chairman Crowley signed in a revised set of prints drawn by Robert Michael Gill, Registered Land Surveyor dated April 28, 2016, revised date June 28, 2016 per ZBA comments and July 19, 2016 to add screening.

They are seeking a waiver from the buffering requirements from the left side, rear, right side and for the two (2) adjacent commercial lots.

As described at the last hearing, the entire rear and left side of the property that could serve as a buffer zone is subject to restrictions that limit plantings as specified in the Wood Turtle Protection Plan by Natural Heritage. There is a natural buffer that exists already. Chairman Crowley asked if these restrictions get recorded as part of the deed for these properties. Attorney Malonis stated it will be recorded as part of the Conservation Order of Conditions. Mr. Hamor noted they will be going to the Board of Selectmen for a Special Permit and these restrictions will be part of that permit and recorded.

Attorney Malonis explained that regarding the proposed buffering between the lot lines, the design intention was to get away from the strip mall look so the property was divided for two (2) structures with a center entrance way to the project which will serve as the buffer between the properties. There is not enough room to accommodate a 30 foot buffer requirement, but there are certain plantings that will be situated in the buffer so it will not be just a wide open area of pavement.

As to the last buffer on the right hand side where it abuts the property owned by Mr. Brox, Attorney Malonis noted that in discussion with Mr. Brox regarding buffering, he was concerned not only with the appearance, but also pedestrians from the facility wandering onto his property. They came up with a solution of putting a 42 inch composite fence to run from the property corner on Broadway Road to the rear of the property, approximately $\frac{3}{4}$ of the way down the side. There will be additional plantings not just a fence. In addition to the fence, there is a 15 foot agriculture easement restriction on Mr. Brox's property. This will provide a nice view for the restaurant to the farm land.

Mr. Hamor updated the plan to incorporate more detail that was requested by the Board on the Zoning Chart as shown on the plan with reference to the variance requirement for buffering. He also updated more descriptively the section 3.10.49 for landscaping for parking areas with greater than 20 parking spaces and requiring that a space be located

not more than 30 feet from the trees themselves. There are four (4) trees required and they are proposing six (6). They also added to the plan the proposed fence that Attorney Malonis spoke about which will be a vinyl picket style with a top rail and passed out a picture (copy attached).

Additional documents (copies attached) provided to the Board as follows:

- Proposed Use Zoning Compliance Determination dated March 15, 2016, updated June 29, 2016 by Mr. McLaughlin, Inspector of Buildings and read by Chairman Crowley.
- Division of Fisheries & Wildlife decision for the wood turtle dated June 15, 2016
- Wood Turtle Protection Plan dated May 20, 2016 prepared by Goddard Consulting
- Rare Species Habitat Assessment dated April 15, 2016 prepared by Goddard Consulting
- Operations & Maintenance Report dated February 15, 2016, revised April 28, 2016 and May 13, 2016 done by Landplex
- ZBA Plan dated July 21, 2016 by Landplex

Chairman Crowley noted for the record that the sign placement was removed as shown previously on the plan which did not meet the setback. The sign will have to comply with the by-law.

Chairman Crowley also noted that they have finished with Conservation and they will incorporate any of the directions from D.E.P. Mr. Hamor stated they received conditional approval last night from Conservation. He also added they were more descriptive on the setback on the plan for the business to business showing the landscape buffering.

Mr. Hamor stated that the Zoning Board of Appeals plan will be entered into the plans that go to the Board of Selectmen as well.

Chairman Crowley noted an issue of concern is about the traffic flow which will be addressed by the Planning Board.

Abutters: Who came forward in favor or in opposition?

John Brox, 1363 Broadway Road: He is in favor of this project. In the discussion about the buffering between the project and his property, his concern was people coming onto his property so screening was needed. He made it very clear that if people cross over and do mischief to his property he will have to build his own buffer zone. He understands that the view is part of the attraction, but may decide to plant a tree farm if people are coming through. If they think this will be an issue, they may want to make it more extensive. He will not consider this a problem until there is a problem. They will have to keep the patrons in line on their side. He feels it should work, but will monitor closely. A motion to close was made by Mr. Lussier and seconded by Ms. Santiago-Hutchings. The Board voted unanimously to close.

A motion to approve the Variance was made by Mr. Brian Lussier and seconded by Ms. Heather Santiago-Hutchings. Mr. Lussier feels that the issues of concern have been addressed and made more clarified with the documents received. Chairman Crowley thinks the clarification on the plan as presented now as revised gives a detailed representation of what the requests are and how it is going to be handled. He feels they have done their job. The Board finds the petitioner meets the requirements of a Variance as follows: that there is a hardship on the use of the land based on the soil conditions,

shape or topography, this requested use does not derogate from the intent of the zoning by-law, and it is not injurious to the neighborhood. The Board voted unanimously to approve.

2016-9 & 10 @ 19 Nancy Avenue – Special Permit 2.16.25 and Variance 2.12.50 for proposed detached 24' x 24' garage with insufficient rear yard setback. Petitioner: Lucien A. Rondeau.

Chairman Crowley opened the meeting and signed in a set of prints drawn by James D. Aho, Professional Land Surveyor dated May 22, 2016.

Mr. Rondeau has owned the property since April 20, 1978 and would like to put a 24'x24' garage in the rear of his property, but has insufficient rear yard setback. The required setback is 35 feet and the garage would be at 15 feet so he needs a variance for 20 feet. He presented pictures of his property to the Board for review. His neighbors on both sides of his property have no problem with the garage. His property backs directly up to the property on Hearthstone Lane with trees in between. There is a shed shown on the plan on the right side of the property which is going to be removed for the driveway. Chairman Crowley noted the shed shown on the plan in the rear of the property is too close to the lot line. The shed will not be part of the variance. It will be up the Building Inspector to make a decision on the shed.

Mr. Lussier questioned if the garage doors will be facing the house. Yes! He noted that if the garage was moved any closer to the house, Mr. Rondeau would not be able to maneuver the car into the garage.

Abutters: Who came forward in favor or in opposition?

Paul Stanton, 11 Nancy Avenue: He is the abutter to the left of the property and is okay with the plan.

A motion to close was made by Mr. McKiel and seconded by Mr. Lussier. The Board voted unanimously to close.

A motion to approve the Special Permit was made by Mr. Brian Lussier and seconded by Mr. Scott McKiel. The Board notes the petitioner meets the intent of this Special Permit section and can be granted the permit without any derogation of the by-laws or without being injurious to the neighborhood. The Board voted unanimously to approve.

A motion to approve the Variance was made by Mr. Brian Lussier and seconded by Ms. Heather Santiago-Hutchings. Chairman Crowley noted the variance is for the proposed garage only and is not meant to recognize or heal any other deficiencies that may exist on the property, in particular the shed in the corner. The Board finds the petitioner meets the requirements of a Variance as follows: that there is a hardship on the use of the land based on the soil conditions, shape or topography, this requested use does not derogate from the intent of the zoning by-law, and it is not injurious to the neighborhood. The Board voted unanimously to approve.

2016-11 @ 526 Mammoth Road – Applicant seeks a Variance pursuant to Dracut Zoning By-law Section 1.13.21 and Section 2.12.50 for a lot of land with insufficient frontage to construct one (1) two-family dwelling. Petitioner: Corcoran Mammoth LLC. Chairman Crowley opened the meeting and signed in a set of prints drawn by Richard A. Alleca, Professional Land Surveyor dated June 24, 2016.

Attorney Fadden will be representing the petitioner Corcoran Mammoth LLC. His Narrative (copy attached) was passed out to the Board members. His client is seeking a variance for a plot of land with insufficient frontage. They are hoping to create a two (2)

lot subdivision, each to include a two (2) family home shown on the plan as Lots A1 and A2.

Attorney Fadden gave an overview of the property which contains approximately 3 acres. The property is located in an R-3 zone which two family use is permitted with 60,000 square feet. Skyline Drive is a private way and is used for access to the large Skyline project in back and the Grassfields Common project which is affordable housing.

The property has 291.48 feet of frontage on Mammoth Road which is 8.5 feet short of the required 150 feet for each lot. They have 540 feet of frontage on Skyline Drive. It is their hope to eliminate any further curb cuts on Mammoth Road and access of the lots to be created from driveways located on Skyline Drive which his client has control of.

The two (2) lots proposed are A1 and A2. Lot A1 has 63,384 square feet with 150 feet of frontage and Lot A2 has 67,919 square feet with 141.47 feet of frontage. If this plan is approved, they will have to get a Form A endorsement and a Special Permit from the Planning Board for the multi-family use. The neighborhood is essentially multi-family.

Attorney Fadden noted the alternative, which they prefer not to do, is to take an 8.5 triangular piece of land from the private drive at Mammoth Road to extend the frontage to 150 feet and reserve the easement right on the private drive. Given the finances with regards to the lenders involved and many easement rights on the private drive, it would make it far more complicated and probably not productive to do it that way.

They are looking for a variance of 8.5 feet to build two duplexes on the two (2) lots created. Lot A2 has insufficient frontage.

Chairman Crowley's understanding is that if the Board was to grant the variance, they would have both properties be entered off of Skyline Drive. Attorney Fadden agreed. The sign at the corner is a new sign in the same location as the original.

There was a discussion about the access and utility easements on Skyline Drive.

Attorney Fadden noted that when the utilities were installed for Grassfields Common, his client had the utilities stubbed off for these two properties. The square footage requirement of 60,000 needed in an R-3 zone was verified with Mr. McLaughlin, Inspector of Buildings. It was noted the wetland calculations were included on the drawing.

Chairman Crowley questioned why not use the Skyline Drive front and a variance would not be needed. Attorney Fadden stated that was the original plan, but unfortunately Skyline Drive does not fall under the statutory requirements for a Form A lot. It is not a public way and was not created by a subdivision plan. It existed prior to subdivision control. The process to have it accepted as a public way would be to go to Town meeting to have accepted and Attorney Fadden feels there would probably have to be significant waivers from the Planning Board before. It is essentially used in a manner consistent with the town as a road. Grassfields uses this as an access and has an easement dated 2010 as part of the 40B. This Board did not want curb cuts on Mammoth Road, but allowed for the private drive to be used as the main entrance.

Chairman Crowley is still concerned why it has not been upgraded to an accepted street as is. One of the things in favor of this plan from his perspective is that they are not creating an additional curb cuts on Mammoth Road as they are not needed in that neighborhood. Attorney Fadden stated that in doing his research of the title, his hope was that the subdivision had gone through subdivision control and even though if it is considered a private way, it would fall within the frontage requirement of an ANR plan,

but it did not. A Form A endorsement in 1969 and subsequently in 1976 did not fall within the statutory definition of frontage.

Abutters: Who came forward in favor or in opposition? None.

A motion to close was made by Mr. McKiel and seconded by Ms. Santiago-Hutchings. The Board voted unanimously to close.

A motion to approve the Variance was made by Mr. Brian Lussier and seconded by Mr. Scott McKiel. Mr. Lussier likes the fact they are not coming off Mammoth Road and this plan makes more sense. If they did anything else it would be a lot more density and nothing in the neighborhood would justify what is there. Chairman Crowley feels Mr. Lussier made some valid points and certainly does not want to see more curb cuts onto Mammoth Road, but maybe it is time they looked at taking Skyline Drive up to where it should be as an accepted street. Mr. Lussier noted that the people who control the LLC in the back may have other reasons why they may want to keep ownership of the street as it may be in their mortgages and could be more complicated. The Board finds the petitioner meets the requirements of a Variance as follows: that there is a hardship on the use of the land based on the soil conditions, shape or topography, this requested use does not derogate from the intent of the zoning by-law, and it is not injurious to the neighborhood. Those voting in favor were Ms. Heather Santiago-Hutchings, Mr. Brian Lussier, Mr. Richard Ahern and Mr. Scott McKiel with Mr. John Crowley voting against. The motion passed on a four (4) to one (1) vote.

2016-12 @ 17-21 Hillside Terrace – Variance for lot with insufficient frontage pursuant to Dracut Zoning By-law Section 1.13.21 and Section 2.12.50 to construct one single family dwelling. Also any other permit relief as may be required under the zoning by-law to allow the proposed use. Petitioner: MC Homes, LLC.

Chairman Crowley opened the meeting and signed in a set of prints drawn by Michael E. Ross, Professional Land Surveyor dated August 22, 2006 with a revision date of November 14, 2006 and May 7, 2010.

Chairman Crowley passed out Attorney Fadden's Narrative (copy attached).

Attorney Fadden noted this case has been heard twice by this Board and gave a background of the property. This is a petition by MC Homes, LLC as the prospective purchaser of this property and owner. They are seeking a variance for frontage requirement.

Attorney Fadden gave an overview of the property. The property is entirely in an R-1 zone that has a requirement of 40,000 square feet of area and 175 feet frontage. This property has 97,000 square feet of area and is the largest lot in the neighborhood. He passed out the Town of Dracut Assessor's Map and highlighted in blue this lot. This lot has 100 feet of frontage on Hillside Terrace which is constructed to Town's standards is an accepted street and to the rear of the property on Midwood Road has 350 feet of frontage which is a paper street and unbuilt. His client could extend Midwood Road and have two (2) conforming R-1 building lots, but he only wants to have one lot with 100 feet of frontage.

Attorney Fadden stated that when the first variance was approved in 2006 there was a major title issue which took three (3) years to solve in Land Court and the property could not be sold. The variance expired. The second variance was approved in 2010 with Donna Dumont. There were some family issues and one of the owners died very

suddenly. The wetlands issue and the conservation work became financially burdensome to the family. The variance expired.

The green line shown on the plan is the building envelope utilizing the setback requirement of the zoning by-laws. The yellow line is a proposed building envelope that was a condition of the Variance in 2006 and 2010. The house will be about 200 feet off the road. The print is identical to the one presented in 2010, but just recertified. The Board reviewed the previous conditions.

Attorney Fadden stated the Conservation has a pending order of conditions with an extension request already filed. The Order of Conditions is still outstanding and has not gone stale.

Chairman Crowley will ask the Board to include the previous variance conditions in this variance if approved.

Abutters: Who came forward in favor or in opposition? None.

A motion to close was made by Ms. Santiago-Hutchings and seconded by Mr. McKiel. The Board voted unanimously to close.

A motion to approve the Variance was made by Mr. Scott McKiel and seconded by Mr. Brian Lussier. Chairman Crowley noted the previous conditions expressed in the 2006 and 2010 variances will be incorporated with this current variance as follows:

1. The proposed single family dwelling is located in the gray area as noted on the accompanying print.
2. No accessory building, pools, swing sets will be put outside the dotted-slashed area shown on the plans.
3. Single family home and must remain a single family home.

The Board finds the petitioner meets the requirements of a Variance as follows: that there is a hardship on the use of the land based on the soil conditions, shape or topography, this requested use does not derogate from the intent of the zoning by-law, and it is not injurious to the neighborhood. The Board voted unanimously to approve.

Acceptance of Minutes:

A motion to accept the June 16, 2016 minutes was made by Ms. Heather Santiago-Hutchings and seconded by Mr. Brian Lussier. The Board voted unanimously to accept the minutes.

New Business:

None.

Next Meeting:

There will be no August Meeting
Thursday, September 15, 2016.

Adjournment:

A motion to adjourn was made by Ms. Heather Santiago-Hutchings and seconded by Mr. Brian Lussier. The Board voted unanimously to adjourn.

Board of Appeals Members

<u>Chairman, John Crowley</u>	<u>Absent</u> Vice Chairman, R. Scott Mallory
<u>Absent</u> Clerk, Stephen Hamilton	<u>Member, Heather Santiago-Hutchings</u>
<u>Member, Brian Lussier</u>	<u>Alternate Member, Richard Ahern</u>
<u>Alternate Member, Scott McKiel</u>	